

**Agreement for Partial Delegation of the Federal  
Prevention of Significant Deterioration (PSD) Program  
by the United State Environmental Protection Agency, Region 10  
to the State of Washington Department of Ecology**

Through this agreement, the Washington State Department of Ecology (Ecology) and the Environmental Protection Agency (EPA) establish the legal and procedural bases for Ecology to conduct new source review and to implement and enforce portions of the federal PSD regulations found in 40 CFR 52.21 (effective March 3, 2003).

**I. Introduction**

Ecology has adopted by reference, with certain minor changes, the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2000. See WAC 173-400-117, -141, 113 and -171 (effective September 15, 2001). The provisions of WAC 173-400-117, -141, and -171 as in effect on September 15, 2001, shall hereafter be referred to as the "State PSD regulations."

Based on those changes, EPA granted Ecology full delegation to implement and enforce the federal PSD regulations in a delegation agreement dated February 7, 2002.

EPA recently promulgated revisions to the federal PSD regulations found in 40 CFR 52.21. See 67 FR 80186, (December 31, 2002). In general, these changes affect the applicability of the federal PSD program to modifications to existing major stationary sources. The provisions of 40 CFR 52.21, as revised on March 3, 2003 shall hereafter be referred to as the "federal PSD regulations."

Ecology and EPA desire to continue to have Ecology implement and enforce the federal PSD regulations to the extent possible while Ecology determines how to revise the State PSD regulations to meet the new federal requirements. Accordingly, EPA and Ecology are entering into this partial Delegation Agreement.

As part of the transition process for implementing the new provisions, Ecology and EPA intend to allow permit applicants to withdraw any PSD permit applications submitted prior to March 3, 2003, and currently under review to afford permit applicants the opportunity to re-evaluate their projects in light of the revised federal PSD requirements if they so choose.

**II. Legal Authority**

- A. Pursuant to 40 CFR 52.21(u), EPA may delegate to a State full or partial responsibility for conducting new source review pursuant to the federal PSD regulations found in 40 CFR 52.21.
- B. As discussed above, Ecology has adopted by reference, with certain minor changes, the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2000. See WAC 173-400-117, -141, and -171.
- C. EPA has determined that Chapter 43.05 of the Revised Code of Washington (RCW), often referred to as "House Bill 1010," conflicts with the delegation requirements of 40 CFR 52.21(u). Based on this determination, Ecology has determined that Chapter 43.05 RCW does not apply to permit to construct requirements of Chapter 173-400 WAC, including the State PSD regulations.

- D. The Ecology Division of the Washington Attorney General's Office has issued an opinion<sup>1</sup> stating that the provisions of RCW 70.94.035, "Air Technical Assistance Visits by Ecology," do not prevent enforcement actions, but only require Ecology to wait until the end of the correction period to determine whether enforcement action is appropriate. Based on that opinion letter, EPA has determined that RCW 70.94.035 does not impermissibly interfere with Washington's enforcement authority. See 59 FR 42552 (August 18, 1994) (proposed interim approval of Washington's title V program).
- E. Ecology and EPA agree that requirements issued in PSD permits under the authority of WAC 173-400-110, -113 and -141 are federally enforceable requirements of the State Implementation Plan even in cases where a federal PSD permit is not required under 40 CFR 52.21. For purposes of incorporating all applicable requirements into the Title V permit, the components of the PSD permit applicable to State PSD requirements remains federally enforceable as a component of the SIP notice of construction approval.

### **III. Scope of Delegation**

- A. Pursuant to 40 CFR 52.21(u), EPA hereby delegates to Ecology partial responsibility for conducting federal new source review and for implementing and enforcing the federal PSD regulations for all sources located in the State of Washington as follows, subject to the terms and conditions of this Delegation Agreement:
  - 1. Ecology has full delegation to conduct federal new source review and to implement and enforce the federal PSD regulations for all new major stationary sources.
  - 2. Ecology has partial delegation to conduct federal new source review and to implement and enforce the federal PSD regulations for all physical or operational changes to existing stationary sources<sup>2</sup> as follows:
    - a. Except for applications for PAL increases under 40 CFR 52.21(aa)(11), Ecology is delegated authority to receive all permit applications, requests for applicability determination, notifications, reports, notices and other documents required under or that relate to the federal PSD regulations.
    - b. Ecology is delegated authority to process, issue, and enforce PSD permits for any physical or operational change to an existing stationary source that Ecology determines is subject to the State PSD regulations and the federal PSD regulations, provided, however, that Ecology will note in the permit record any instance where Ecology determines that an emission unit or pollutant is subject to the State PSD regulations but not the federal PSD regulations.
    - c. Ecology is delegated authority to conduct applicability determinations that relate to the applicability of the federal PSD regulations to physical or operational changes to existing stationary sources, provided, however, that

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<sup>1</sup>Letter from Mary Sue Wilson, Assistant Attorney General, to Chuck Clarke, Regional Administrator, dated June 7, 1994, regarding Supplement to October 27, 1993 and December 30, 1993 Attorney General Opinion Letters for Washington State Department of Ecology.

<sup>2</sup>The reference to "physical or operational changes to existing stationary sources" covers both (a) any physical or operational change to an existing major stationary source and (b) any physical or operational change that would occur at a stationary source not otherwise qualifying under 40 CFR 52.21(b)(1) as a major stationary source if the change would constitute a major stationary source by itself.

the following additional conditions apply in the circumstances described below. For purposes of this Delegation Agreement, an applicability determination includes a written determination in a preliminary decision or permit.

(i) Determining the Emissions Increase

(A) *Applicability Test for Physical or Operational Changes to Existing Electric Utility Steam Generating Units (EUSGUs) and Construction of Replacement EUSGUs.*

(I) Determination - Applicability. Ecology is delegated the authority to act upon requests from sources to determine whether a significant emissions increase will result from a physical or operational change to an EUSGU or the construction of a replacement EUSGU, and to determine whether a significant net emissions increase will occur at the stationary source. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of Ecology's determination along with a copy of the request.

(II) Determination - Baseline Actual Emissions<sup>3</sup>. Ecology is delegated the authority to act upon requests from sources to use a different time period than that specified in 40 CFR 52.21(b)(48)(i) to calculate baseline actual emissions. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of the determination along with a copy of the request.

(III) Reporting - Projected Actual Emissions. Ecology is delegated the authority to receive from sources the information required under 40 CFR 52.21(r)(6)(ii) to calculate an EUSGU's projected actual emissions at a stationary source.<sup>4</sup> Ecology will forward a copy of the information to EPA and the Title V permitting authority upon receipt of the information.

(IV) Reporting - Actual Annual Emissions. Ecology is delegated the authority to receive from sources the annual emissions report required under 40 CFR 52.21(r)(6)(iv) for an EUSGU at a stationary source.<sup>5</sup> Ecology will forward a copy of any emission report to EPA and the Title V permitting authority upon receipt of the report.

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<sup>3</sup>Sources are required to obtain this determination from Ecology prior to beginning actual construction.

<sup>4</sup>EUSGUs opting to use the actual-to-projected-actual applicability test are required to submit this information to Ecology prior to beginning actual construction.

<sup>5</sup>EUSGUs opting to utilize the actual-to-projected-actual applicability test are required to submit this report to Ecology within 60 days after the end of each year during which records must be generated under 40 CFR 52.21(r)(6)(iii).

(B) *Applicability Test for Physical or Operational Changes to Existing Units (non-EUSGUs) and Construction of Replacement Units (non-EUSGUs).*<sup>6</sup>

(I) Determination - Applicability. Ecology is delegated the authority to act upon requests from sources to determine whether a significant emissions increase will result from a physical or operational change to an emissions unit or the construction of a replacement emissions unit, and to determine whether a significant net emissions increase will occur at the stationary source. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of the determination along with a copy of the request.

(II) Reporting - Actual Annual Emissions. Ecology is delegated the authority to receive from sources the annual emissions report under 40 CFR 52.21(r)(6)(v) for an emissions unit at a stationary source.<sup>7</sup> Ecology will forward a copy of the emissions report to EPA and the Title V permitting authority upon receipt of the report.

(ii) Clean Units

(A) *Clean Unit I - Units which Automatically Qualify as a Clean Unit.*

(I) Original Designation. The provisions of 40 CFR 52.21(x) for automatic Clean Unit designation are self-implementing for emissions units that have been issued a BACT determination in a federal or SIP-approved major new source review permit within the last 10 years.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required by 40 CFR 52.21(x)(6)(i)-(vi) related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(x)(6)(ii) and (iii) specifying the effective date and expiration date, respectively, of the

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<sup>6</sup>For a discussion regarding the treatment of replacement units, please refer to 67 FR 80194.

<sup>7</sup>Non-EUSGUs opting to utilize the actual-to-future-actual applicability test are required to submit this report to Ecology if annual emissions exceed baseline actual emissions by a significant amount and if such emissions differ from the preconstruction projection. The report is to be submitted within 60 days after the end of each year during which records must be generated under 40 CFR 52.21(r)(6)(iii).

Clean Unit designation<sup>8</sup>. Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(II) Re-designation. Ecology is delegated the authority to act upon requests from sources to re-designate an emissions unit as a Clean Unit pursuant to 40 CFR 52.21(x)(3)(iii) or 40 CFR 52.21(y)(3)(iv).<sup>9</sup> Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the final permit or order along with a copy of the request.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(x)(6)(i)-(vi) or 40 CFR 52.21(y)(8)(i)-(vi), as applicable, related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(x)(6)(ii) and (iii) or 40 CFR 52.21(y)(8)(ii) and (iii), as applicable, specifying the effective date and expiration date, respectively, of the Clean Unit designation.<sup>10</sup> Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(B) *Clean Unit II - Units which Do Not Automatically Qualify as a Clean Unit.*

(I) Original Designation. Ecology is delegated the authority to act upon requests from sources to designate an emissions unit as a Clean Unit pursuant to 40 CFR 52.21(y)(3).<sup>11</sup> Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting

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<sup>8</sup>Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

<sup>9</sup>Sources have the option of requesting Clean Status re-designation pursuant to the requirements of 40 CFR 52.21(x)(3)(iii) or 40 CFR 52.21(y)(3)(iv). For requests seeking approval under 40 CFR 52.21(x)(3)(iii), Ecology intends to use its authority under WAC 173-400-141. For requests seeking approval under 40 CFR 52.21(y)(3)(iv), Ecology intends to use its authority under WAC 173-400-091.

<sup>10</sup>Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

<sup>11</sup>For requests seeking approval under 40 CFR 52.21(y)(3), Ecology intends to use its authority under WAC 173-400-091.

authority to ensure that the terms and conditions required by 40 CFR 52.21(y)(8)(i)-(vi) related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(y)(8)(ii) and (iii) specifying the effective date and expiration date, respectively, of the Clean Unit designation.<sup>12</sup> Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(II) Re-designation. Ecology is delegated the authority to act upon requests from sources to re-designate an emissions unit as a Clean Unit pursuant to 40 CFR 52.21(y)(3)(iv).<sup>13</sup> Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(y)(8)(i)-(vi) related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(y)(8)(ii) and (iii) specifying the effective date and expiration date, respectively, of the Clean Unit designation.<sup>14</sup> Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(iii) Pollution Control Projects

(A) *PCP I. Projects presumed to be environmentally beneficial.*

(I) The provisions of 40 CFR 52.21(z) for projects listed as PCPs under 40 CFR 52.21(b)(32)(i)-(vi) are self-implementing. Ecology is delegated authority to receive from sources the notices required by 40 CFR 52.21(z)(1) and to request additional information necessary to evaluate the suitability of the project for the PCP exemption as provided in

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<sup>12</sup>Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

<sup>13</sup>For requests seeking approval under 40 CFR 52.21(y)(3), Ecology intends to use its authority under WAC 173-400-091.

<sup>14</sup>Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

40 CFR 52.21(z)(4). Ecology will forward a copy of the notice to EPA and the Title V permitting authority upon receipt of the notice.

(II) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(z)(6) are included in the Title V permit for the source.

(B) *PCP II. Projects not presumed to be environmentally beneficial.*

(I) For projects not listed as PCPs under 40 CFR 52.21(b)(32)(i)-(vi), Ecology is delegated the authority to act upon requests from sources for approval to use the PCP exclusion as provided in 40 CFR 52.21(z)(1) and (5).<sup>15</sup> Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(II) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(z)(6) are included in the Title V permit for the source.

(iv) Plantwide Applicability Limitations

(A) Ecology PALs.

(I) Ecology is delegated the authority to act upon an application from a source for a PAL pursuant to 40 CFR 52.21(aa)(1)<sup>16</sup>.

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit along with a copy of the request.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

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<sup>15</sup>For requests seeking approval under 40 CFR 52.21(z)(5), Ecology intends to use its authority under WAC 173-400-091 and -110 as appropriate.

<sup>16</sup>For requests seeking PALs, Ecology intends to use its authority under WAC 173-400-091, -110 and -141 as appropriate.

(II) Ecology is delegated the authority to act upon an application from a source to renew a PAL pursuant to 40 CFR 52.21(aa)(10).<sup>17</sup>

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(III) Ecology is delegated the authority to reopen a PAL pursuant to 40 CFR 52.21(aa)(8).<sup>18</sup>

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(B) EPA PALs.

(I) Ecology is not delegated the authority to act upon an application from a source to increase a PAL pursuant to 40 CFR 52.21(aa)(11). Applications for PAL increases shall be submitted directly to EPA and EPA shall approve PAL increases through the issuance of a permit under the federal PSD regulations.

(a) Upon issuance of the final permit, EPA will provide to Ecology and the Title V permitting authority a copy of the permit along with a copy of the request.

(b) Coordination with Title V Permitting Authority. EPA will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit are included in the Title V permit for the source.

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<sup>17</sup>For requests seeking PAL renewals, Ecology intends to use its authority under WAC 173-400-091, -110 and -141 as appropriate.

<sup>18</sup>Except for those PAL reopenings under 40 CFR 52.21(aa)(8)(ii)(a)(1), Ecology intends to reopen PALs using its authority under WAC 173-400-091 and -110 as appropriate.



3. Notwithstanding the provisions of subsection III.A.2., Ecology is not delegated authority for any change to a source that is a major modification to an existing stationary source under the federal PSD regulations but not under the State PSD regulations. All permit applications, notices, and reports relating to such changes received by Ecology shall be promptly forwarded to EPA or the applicant shall be directed to submit the application materials directly to EPA.
  4. The parties acknowledge that under certain circumstances the State PSD regulations and federal PSD regulations have different applicability criteria and that obtaining an exemption under one set of PSD regulations does not relieve a facility from compliance with the other PSD regulations.
- B. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C.1151. Consistent with previous federal program approvals or delegations, EPA will continue to implement the federal PSD program in Indian Country in Washington because Ecology did not adequately demonstrate its authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. § 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust land within the 1873 Survey Area. After consulting with the Puyallup Tribe of Indians, EPA's delegation in this agreement applies to sources and activities on non-trust lands within the 1873 Survey Area. Therefore, Ecology will implement and enforce the federal PSD requirements on these non-trust lands of the 1873 Survey Area as provided in this Delegation Agreement.
- C. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities under the jurisdiction of the State of Washington Energy Facilities Site Evaluation Council (EFSEC).
- D. The EPA Administrator has delegated to the Director of the Region 10 Office of Air Quality, the authority to delegate the federal PSD regulations to any State or local agency. The State or local agency that receives delegation from EPA Region 10 does not have the authority under the federal Clean Air Act to further delegate the federal PSD regulations.

#### **IV. Requirements**

- A. The responsibility for conducting new source review for all regulated sources as provided by this Delegation Agreement, including those under the jurisdiction of the Industrial Section, the Nuclear and Mixed Waste Program, and local air authorities in the State of Washington, rests with Ecology's Air Quality Program. EPA is relying on the technical and programmatic expertise of the Technical, Information, and Engineering Section (TIES) of Ecology's Air Quality Program in the implementation of this Delegation Agreement on Ecology's behalf. The processing, issuance, and enforcement of PSD permits, Clean Unit Designations, Pollution Control Project Approvals, and PALs shall be conducted in consultation and coordination with TIES. All applicability determinations under this Delegation Agreement will be made by the Manager of TIES or a higher level manager within Ecology. In no event will an applicability determination be made at a level lower than the Manager of TIES. Ecology will ensure that other Ecology offices and local air authorities are aware that all PSD applicability determinations under this Delegation Agreement must be made by the Manager of TIES or a higher level manager within Ecology.

- B. Ecology will ensure that there are adequate resources and trained personnel within the TIES to implement an effective PSD permit program. As requested, EPA will provide technical assistance related to the federal PSD requirements, including without limitation, PSD applicability determinations, Best Available Control Technology (BACT) determinations, air quality monitoring network design, and modeling procedures. EPA will provide PSD training for Ecology staff to meet needs identified by EPA or Ecology.
- C. Where the rules or policies of Ecology are more stringent than the federal PSD program, Ecology may elect to include such requirements in the PSD permit along with the EPA requirements.
- D. If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether one is more stringent than the other, subject to the requirements of section 116 of the Clean Air Act.
- E. Ecology will follow all PSD policy, guidance, and determinations issued by EPA for implementing the federal PSD program as provided in this Delegation Agreement. EPA will provide Ecology with copies of EPA policies, guidance, and determinations through the Region 7 NSR database and/or hard copies where appropriate. Where no current EPA policy or guidance clearly covers a specific situation, Ecology shall consult with the EPA Office of Air Quality on its proposed interpretation of the EPA regulations.
- F. Ecology will at no time grant a waiver to the requirements of 40 CFR 52.21 or to the requirements of an issued PSD permit.
- G. Ecology shall consult with the appropriate State and local agency primarily responsible for managing land use as provided in 40 CFR 52.21(u)(2)(i) prior to making any preliminary or final determination under this Delegation Agreement.
- H. In order to assist EPA in carrying out its responsibilities under Section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq., and 50 C.F.R., part 402, subpart B (“Consultation Procedures”), and with Section 305(b)(2) of the Magnuson-Stevens Fishery and Conservation Act (“Magnuson-Stevens Act”), 16 U.S.C. § 1801 et seq., and 50 C.F.R., part 600, subpart K (“EFH Coordination, Consultation, and Recommendations”), for federal PSD permits, regarding essential fish habitat, Ecology shall:
  - 1. Within 5 working days of receipt of a complete PSD permit application, notify the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), as appropriate, of the permit application, and to provide a copy of the permit application if requested.
  - 2. Notify applicants of the potential need for consultation between EPA and FWS and/or NMFS if the project may affect an endangered species, or if the project may affect essential fish habitat.
  - 3. Refrain from issuing a final PSD permit until EPA has notified Ecology that EPA has satisfied its obligations, if any, under the ESA and/or the Magnuson-Stevens Act.

## **V. Permit Issuance, Modification, and Appeals**

- A. All preliminary and final determinations issued by Ecology under this Delegation Agreement shall indicate that an appeal to the EPA Administrator is available pursuant to 40 CFR part 124.
- B. The permit provisions in 40 CFR 124.19 shall apply to all appeals to the EPA Administrator on PSD permits issued by Ecology under this Delegation Agreement, including those permits co-signed by EPA. For purposes of implementing the Federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a preliminary determination or proposed permit condition, the final permit issued by Ecology is required to state that for federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19:
  - 1. The effective date of the permit is 30 days after service of notice to the applicant and commentors of the final decision to issue, modify, or revoke and reissue the permit, unless review is requested on the permit under 40 CFR 124.19 within the 30 day period.
  - 2. If an appeal is made to the EPA Administrator, the effective date of the permit is suspended until such time as the appeal is resolved.
- C. A PSD permit (or a portion of a PSD permit) for a change to a facility that is a major modification under the State PSD regulations but not the federal PSD regulations shall be enforceable under State law only and shall not be appealable to the EPA Environmental Appeals Board.
- D. Modifications to existing PSD permits, except for administrative amendments, shall be processed in accordance with all of the substantive and procedural requirements applicable to new permits.
- E. Failure by Ecology to comply with the requirements of 40 CFR part 124 related to PSD permits and this Section V. of the Delegation Agreement shall render the subject permit invalid for federal PSD purposes.

## **VI. Enforcement**

- A. Ecology or the local air authority with jurisdiction over the source will have the primary responsibility for enforcing the federal PSD regulations for sources subject to this Delegation Agreement, provided, however, that:
  - 1. In the case of any requirement of the federal PSD regulations that is not also a requirement of the State PSD regulations, EPA retains primary enforcement authority.
  - 2. Ecology shall have the responsibility under this Delegation Agreement to enforce the federal PSD regulations in the event that a local air authority does not.
  - 3. In all cases, EPA retains authority pursuant to section 113 of the Clean Air Act with respect to sources that are subject to the federal PSD requirements, including federal PSD permits issued by Ecology.

- B. In delegated programs, the role of the State and local agencies is that of primary enforcer or “front line” agency in program implementation. This includes helping to define EPA’s role in the regulated community for a given program. EPA’s principal role is “back up” for the State/local program. However, EPA will initiate an enforcement action, as appropriate, under the following circumstances:
1. At the State or local air agency’s request;
  2. If a State or local air agency action is determined to be inadequate, or the State/local agency fails to carry out action in a timely or appropriate manner (in this situation, the parties will adhere to the “no surprises” principle and will follow the conflict resolution process described in Section IX of the *Washington State Compliance Assurance Agreement for Air Programs (October 1999)*); and/or
  3. As part of EPA’s role established in the collaborative planning process, which includes those situations where national, regional, or sector initiatives warrant an EPA lead.
- C. PSD enforcement actions under this Delegation Agreement will be undertaken by qualified inspectors or trained enforcement staff in Ecology’s Regional Offices, the Ecology’s Industrial Section, Ecology’s Air Quality Program Headquarters, Ecology’s Nuclear and Mixed Waste Program, or local air authorities.
- D. Enforcement of the federal PSD regulations is subject to the *Washington State Compliance Assurance Agreement for Air Programs (October 1999)*, signed by both the State and local agencies. This clearly defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Aerometric Information Retrieval System/Aerometric Facility Subsystem (AIRS/AFS).

## VII. EPA And Ecology Communications

- A. Ecology shall submit to EPA copies of the following documents, within the timeframes indicated, for sources or activities subject to this Delegation Agreement:

Action	Submittal to EPA	Timeframe
Written applicability determination that a proposed source or activity is subject to or exempt from federal PSD regulations	Copy of request and final determination	Within five working days after signature
Receipt of PSD permit application*	Copy of application and cover letter	Within five working days after receipt
Completeness determination or letter of deficiencies*	Copy of letter to applicant	Within five working days after signature
Transmittal to Federal Land Manager (FLM) of PSD application*	Copy of letter	Within five working days after signature
Receipt of comments from FLM*	Copy of comment letter	Within five working days of receipt

Preliminary determination, proposed PSD permit, public notice	Copy of preliminary determination, proposed PSD permit, and public notice	Within five working days after completion of preliminary determination
Public notice of hearing (see 52.21(u)(2)(ii))*	Copy of notice	Prior to publication
Receipt of comments from public*	Copy of public comment letter(s)	Within five working days of the close of the public comment period
Final determination, PSD permit and transmittal letter	Copy of final determination PSD permit and transmittal letter	Within five working days after final signature on PSD permit
BACT determination submittal to RACT/BACT/ LAER Clearinghouse	Electronic or paper submittal of required information	Within 20 working days of final signature on PSD permit
Receipt of EUSGU projected actual emissions information (see Section III.A.2(i)(A)(III))	Copy of information	Within five working days after receipt
Receipt of EUSGU actual annual emissions report (see Section III.A.2 (i)(A)(IV))	Copy of report	Within five working days after receipt
Receipt of non-EUSGU actual annual emissions report (see Section III.A.2 (i)(B)(II))	Copy of report	Within five working days after receipt
Issuance of Clean Unit I Re-designation through WAC 173-400-141 (see Section III.A.2 (ii)(A)(II))	Copy of request and final action	Within five working days after issuance
Issuance of Clean Unit II Designation or Re-designation (see Sections III.A.2 (ii)(A)(II), III.A.2(ii)(B)(I), III.A.2(ii)(B)(II))	Copy of request and final action	Within five working days after issuance
Receipt of notices for effective dates and expiration dates for Clean Unit I & II designation and re-designations (see Sections III.A.2(ii)(A)(I)(b), III.A.2(ii)(A)(II)(b), III.A.2(ii)(B)(I)(b), III.A.2(ii)(B)(II)(b))	Copy of notice	Within five working days after receipt
Receipt of PCP I exclusion notice (see Section III.A.2 (iii)(A)(I))	Copy of notice	Within five working days after receipt
Issuance of PCP II exclusion (see Section III.A.2 (iii)(B)(I))	Copy request and final action	Within five working days after issuance
Issuance of PAL permit (see Section III.A.2 (iv)(A)(I))	Copy of request and final action	Within five working days after issuance

Issuance of PAL permit (renewal) (see Section III.A.2 (iv)(A)(II))	Copy of request and final action	Within five working days after issuance
Issuance of PAL permit (reopening) (see Section III.A.2 (iv)(A)(III))	Copy of final action	Within five working days after issuance

\* Only required when one or more pollutants are subject to federal PSD requirements.

B. EPA shall submit to Ecology copies of the following documents within the timeframes indicated.

<b>EPA Action</b>	<b>Submittal to Ecology</b>	<b>Timeframe</b>
Issuance of PAL permit (increase) under 40 CFR 52.21(aa)(11)(see Section III.A.2 (iv)(B)(I))	Copy of PAL permit	Within five working days after issuance

- C. Ecology and EPA should communicate sufficiently to guarantee that each is fully informed and current regarding interpretation of federal PSD regulations (including any unique questions about PSD applicability). Any records or reports relating to PSD permitting or compliance with PSD requirements that are provided to or otherwise obtained by Ecology and are not identified in the Table in Section VII.A. above should be made available to EPA upon request.
- D. Ecology will work with owners and operators of sources and activities subject to the federal PSD regulations to ensure all required information is submitted to Ecology. Ecology will ensure that the information set forth in paragraphs VII. A. and B. is provided to EPA as set forth in those paragraphs and that all other information is submitted to EPA upon request.
- E. Ecology will ensure that all relevant source information, notifications and reports are entered into the EPA AIRS/AFS national database system in order to meet its record keeping and reporting requirements. In addition to the National Minimal Data Requirements (MDRs) (attached), Ecology shall enter the following information or activities:
1. The Air Program Code for PSD
  2. The date the PSD permit is issued or modified
  3. The final effective date of the PSD permit (or modified permit)
  4. The date that the new source or modification begins construction; and
  5. The date that the new source or modification begins operation.
- F. Correspondence from EPA to Ecology will be sent to:

Alan Newman, Senior Engineer  
Department of Ecology, Air Quality Program  
P. O. Box 47600  
Olympia, WA 98504-7600

Correspondence from Ecology to EPA will be sent to:

Dan Meyer  
Office of Air Quality  
Environmental Protection Agency, Region 10  
OAQ-107  
1200 Sixth Avenue  
Seattle, WA 98101

#### **VIII. Future EPA Regulation Revisions**

- A. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations does not extend to revisions to 40 CFR 52.21 that occur, or have occurred, after March 3, 2003.
- B. A new request for delegation will be required for any changes to 40 CFR Part 52.21 promulgated after March 3, 2003. Implementation and enforcement of new or revised requirements after March 3, 2003 will remain the sole responsibility of EPA until this Delegation Agreement is revised.

#### **IX. Administrative**

- A. This delegation supersedes the previously delegated authority contained in the September 30, 1983 letter to Ecology from the EPA Regional Administrator and the February 7, 2002 and June 4, 1992 Agreements for Delegation.
- B. If, after consultation with Ecology, EPA makes any of the following determinations, this delegation may be revoked in whole or in part. As part of the consultation, the parties will adhere to the "no surprises" principle and will follow the conflict resolution process described in Section IX of the *Washington State Compliance Assurance Agreement for Air Programs (October 1999)*. Any such revocation shall be effective as of the date specified in a *Notice of Revocation*.
  - 1. Ecology's legal authority, rules and regulations, and/or procedures for implementing or enforcing the federal PSD requirements as provided in this Delegation Agreement are inadequate;
  - 2. Ecology is not adequately implementing or enforcing the federal PSD program; or
  - 3. Ecology has not implemented the requirements or guidance with respect to a specific permit in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act.
- C. In the event that Ecology is unwilling or unable to implement or enforce the federal PSD regulations as provided in this Delegation Agreement with respect to a source or activity subject to the federal PSD regulations, Ecology will immediately notify the Director of the Office of Air Quality. Failure to notify the Director of the Office of Air Quality does not preclude EPA from exercising its enforcement authority.
- D. EPA may review the state PSD permitting program as part of the review of the Performance Partnership Agreement (PPA) or any other appropriate agreement. EPA may review State procedures and recommend changes as necessary. All recommendations will be in writing.

- E. In the event that EPA or Ecology regulations or policies change, this delegation shall be either amended to ensure the continued implementation of EPA's PSD regulations or the delegation shall be revoked.
- F. The delegation agreement shall expire on the earlier of the following dates:
1. The effective date of an EPA action to approve or disapprove an Ecology PSD SIP;  
or
  2. January 2, 2006.

**X. Signatures**

On behalf of the Environmental Protection Agency, I grant partial delegation of the federal PSD program, 40 CFR 52.21, to the Washington Department of Ecology pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date: 3/28/03

Betty A. Heise  
Director  
Office of Air Quality  
Environmental Protection Agency  
Region 10

On behalf of the State of Washington and the Department of Ecology, I accept partial delegation of the federal Prevention of Significant Deterioration program, 40 CFR 52.21, program pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date: 28 March 2003

Mary E. Burg  
Manager  
Air Quality Program  
State of Washington  
Department of Ecology